

Hon. Richard Prebble

AUCKLAND AIRPORT

ANALYSIS

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A BILL INTITULED

An Act to provide for the incorporation of a company to own and operate Auckland International Airport, for the transfer of airport assets and liabilities of the Crown, the Auckland Regional Authority, and certain local authorities to that company, for the payment to the Crown and those local authorities of the existing reserves of the airport, and to amend the Civil Aviation Act 1964 and the Stamp and Cheque Duties Act 1971

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Auckland Airport Act 1987.

2. Interpretation—In this Act, unless the context otherwise requires,—

- “Agreement” has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:
- “Airport” means the Auckland International Airport at Mangere in the North Auckland Land District, being an area of approximately 1100 hectares which includes a runway, an international terminal and a domestic terminal and other buildings, installations and facilities: 5
- “Airport assets” means any assets of the Crown, the Auckland Regional Authority or any constituent authority or constituent authorities, (whether held jointly or severally) that are held or used for the purposes of or in relation to the airport or that are held for future use for the purposes of the airport; but does not include— 10
- (a) Any assets declared by the Ministers by any notice in the *Gazette* not to be airport assets; or
- (b) Airport reserves other than any airport reserves designated by the Minister of Finance by any notice in the *Gazette* to be airport assets for the purposes of this Act: 15 20
- “Airport liabilities” means any liabilities of the Crown, the Auckland Regional Authority or any constituent authority or constituent authorities, (whether incurred jointly or severally) that were incurred for the purposes of the airport; but does not include any liabilities declared by the Ministers by any notice in the *Gazette* not to be airport liabilities: 25
- “Airport reserves” means the reserves as shown in the accounts for the year ending on the 31st day of March 1986 of the joint venture for the establishment and operation of the airport constituted under the joint venture agreements and any amounts that ought properly to be treated as being of the same character which accrue immediately before the vesting day; but in any event a sum of not less than \$110,000,000: 30 35
- “Assets” has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:
- “Company” means the company formed and registered under section 4 of this Act: 40
- “Constituent authority” means a local authority specified in the Schedule to this Act:
- “Debt security” has the same meaning as in section 2 (1) of the Securities Act 1978: 45

“Equity security” has the same meaning as in section 2 (1) of the Securities Act 1978:

“Joint venture agreements” means—

5 (a) The deed dated the 25th day of November 1963 made between Her Majesty the Queen acting by and through the Minister of Works and the Minister in Charge of Civil Aviation of the one part and the body corporate called the Mayor, Councillors, and Citizens of the City of Auckland of the other part:

10 (b) The deed dated the 14th day of April 1966 made between Her Majesty the Queen acting by and through the Minister of Works and the Minister of Civil Aviation of the one part and the body corporate called the Auckland Regional Authority of the other part:

15 (c) Any other agreement relating to the airport to which the Crown is a party together with any one or more of the Auckland Regional Authority or a constituent authority which is specified by the Governor-General by Order in Council to be a joint venture agreement for the purposes of this Act:

20 “Land” has the same meaning as in section 2 of the Land Transfer Act 1952:

25 “Liabilities” has the same meaning as in section 29 (1) of the State-Owned Enterprises Act 1986:

“Local authority” has the same meaning as in section 2 of the Airport Authorities Act 1966:

30 “Ministers” means the Minister of Finance and the Minister of Civil Aviation and Meteorological Services acting on behalf of the Crown:

“Specified percentage”, in relation to a constituent authority, means the percentage specified in relation to that constituent authority in the Schedule to this Act:

35 “Vesting day” means the date specified in the first Order in Council made by the Governor-General under section 6 of this Act.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Incorporation of company to own and operate Auckland International Airport—(1) The Ministers may form and register under the Companies Act 1955 a public company limited by shares that—

(a) Has such name as the Ministers shall decide; and

(b) Has a memorandum of association and articles of association in such form as the Ministers may determine.

(2) The Ministers may subscribe for equity securities in the company to be issued on its incorporation and any other equity securities to be so issued shall be subscribed for by nominees of the Ministers. 5

(3) The Ministers may subscribe for or hold any other equity securities or debt securities issued by the company.

(4) The memorandum of association and articles of association of the company shall be laid before the House of Representatives by the Minister of Civil Aviation and Meteorological Services within 12 sitting days after the incorporation of the company. 10

(5) All money required to be paid by the Ministers on subscribing or applying for, or being allotted, equity securities or debt securities of the company shall be paid for out of the Consolidated Account or Loans Account out of money appropriated by Parliament for the purpose. 15

(6) On and after the vesting day the company shall be deemed to be an airport company within the meaning, and for the purposes, of the Airport Authorities Act 1966. 20

(7) Nothing in section 134 of the Companies Act 1955 or section 3A of the Airport Authorities Act 1966 applies to the company. 25

5. Restrictions on issue and transfer of shares—(1) No equity securities in the company shall be issued, allotted, sold, or otherwise disposed of to any person or body other than the Crown, a constituent authority, a local authority or the Airways Corporation of New Zealand Limited. 30

(2) Nothing in subsection (1) of this section applies to redeemable preference shares that—

- (a) Are not convertible into shares of any other class; and
- (b) Do not confer any rights to vote at any general meeting of the company. 35

6. Vesting of airport assets and airport liabilities in company—(1) The Ministers may, at any time or times, prepare a list or lists specifying the airport assets and airport liabilities which in the opinion of the Ministers should be vested in the company in accordance with this Act. 40

(2) Every list prepared under subsection (1) of this section shall—

- (a) Contain a description of each asset and liability, either individually or as a group or class; and
 - (b) State the value attributed by the Ministers to each asset and liability, either individually or as a group or class; and
 - (c) Be signed by the Ministers; and
 - (d) Be laid before the House of Representatives by the Minister of Civil Aviation and Meteorological Services within 12 sitting days of its being signed.
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- 10 (3) The Governor-General may, at any time or times, by Order in Council, vest in the company on a date specified in the order the airport assets and airport liabilities specified in the order, being assets and liabilities set out in a list prepared pursuant to **subsection (1)** of this section and which is referred to
- 15 in the order.
- (4) Every Order in Council under **subsection (3)** of this section shall—
- (a) Specify the kind, number, nominal value, and terms of any equity securities that shall be issued by the company consequent upon the vesting in it of the airport assets and airport liabilities referred to in the order; and
 - (b) Specify the kind, number, nominal value, and terms (including interest) of any debt securities that shall be issued by the company consequent upon the vesting in it of the airport assets and airport liabilities referred to in the order; and
 - (c) Specify the date on which the equity securities and debt securities shall be issued.
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- 30 (5) On the date specified in the Order in Council pursuant to **subsection (4) (c)** of this section the company shall—
- (a) Issue to the Ministers and the constituent authorities in accordance with **subsection (6)** of this section and as fully paid up equity securities of such kind, number, nominal value, and terms as are specified in the order;
 - (b) Issue to the Ministers and the constituent authorities debt securities of such kind, number, nominal value, and terms as are specified in the order.
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- 40 (6) Equity securities issued by the company under **subsection (5)** of this section shall be issued—
- (a) Fifty percent to the Ministers in equal proportions; and

- (b) Fifty percent to the constituent authorities in accordance with the specified percentage of each constituent authority—

except that on the first issue of such equity securities under paragraph (a) of this subsection the equity securities issued shall be reduced by the number of equity securities subscribed for and issued on the incorporation of the company. 5

(7) Debt securities issued under subsection (5) of this section shall be issued—

- (a) Fifty percent to the Minister of Finance: 10

- (b) Fifty percent to the constituent authorities in accordance with the specified percentage of each constituent authority.

(8) Nothing in subsections (1) (b) and (2) of section 60 of the Companies Act 1955 shall apply in respect of equity securities issued pursuant to subsection (5) of this section. 15

(9) Assets that are fixed to, or are under or over, any land may vest in the company under this Act notwithstanding that no interest in the land also vests in the company under this Act and in any such case the asset and the land shall be regarded as separate assets each capable of separate ownership. 20

7. Additional provisions relating to vesting of airport assets and airport liabilities in company—(1) Nothing effected or authorised by this Act—

- (a) Shall be regarded as placing the Crown, the Auckland Regional Authority, any constituent authority or any other person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong: 25

- (b) Shall be regarded as giving rise to a right for any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation; or 30

- (c) Shall be regarded as placing the Crown, the Auckland Regional Authority, any constituent authority or any other person in breach of any enactment or rule of law or contractual provision prohibiting, restricting, or regulating the assignment or transfer of any property or the disclosure of any information; or 35

- (d) Shall release any surety from any obligation; or

- (e) Shall invalidate or discharge any contract or security.

(2) Where an asset or liability is vested in the company under this Act— 40

- (a) The Crown, the Auckland Regional Authority and any constituent authority, as the case may be, shall

5 remain liable to any third party as if the asset or liability had not been so vested; and in any such case the company shall indemnify the Crown, the Auckland Regional Authority or that constituent authority in respect of any liability arising under this subsection:

10 (b) Any satisfaction or performance by the company in respect of the asset or liability shall be deemed to be also satisfaction or performance by the Crown, the Auckland Regional Authority, or the constituent authority or constituent authorities, as the case may be:

15 (c) Any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the company shall be deemed to be also to the benefit of the Crown, the Auckland Regional Authority, or the constituent authority or constituent authorities, as the case may be.

20 (3) District Land Registrars are hereby authorised and directed to make such entries in their respective registers and do everything necessary to give effect to the vesting of any land or any estate or interest in land under this Act.

25 (4) The provisions of this Act vesting any assets or liabilities in the company shall have effect notwithstanding any enactment, rule of law or agreement and, in particular, but without limitation, the provisions of this Act vesting any land in the company shall have effect notwithstanding any provision contained in the Land Act 1948, the Reserves Act 1977, or the Public Works Act 1981 or in any other Act relating to land.

30 (5) A certificate, signed by the Chief Surveyor for the land district in which the land is situated, that any land described in the certificate, or described in any document on which the certificate appears, is land to which **subsection (4)** of this section applies shall be sufficient evidence, in the absence of proof to
35 the contrary, that that subsection applies to the land.

(6) Where by virtue of this Act any land vests in the company the land shall vest in the company for an estate in fee simple subject to all leases, agreements to lease, and easements existing in respect of any part of that land immediately before
40 the land vests in the company but otherwise freed and discharged from all trusts and reservations affecting it.

8. Local Authorities (Employment Protection) Act 1963 applied—(1) The Local Authorities (Employment Protection)

Act 1963 shall apply, with effect on and from the vesting day, in respect of the employees of the Auckland Regional Authority as if—

- (a) The Auckland Regional Authority and the company were local authorities for the purposes of that Act; and 5
- (b) The operation of the airport were an undertaking or function transferred from the Auckland Regional Authority to the company; and
- (c) The vesting day were the date of transfer; and 10
- (d) In section 5 (2) of that Act for the words “Minister, after consultation with the Minister charged with the administration of the Act under which the local authorities or any of them are constituted and after making such other inquiries as he thinks fit, determines”, there were substituted the words 15
“Minister of Local Government and the Minister of Civil Aviation and Meteorological Services shall determine”; and
- (e) Every reference in that Act to the expression “2 years” were a reference to the term “1 year”. 20

(2) No person to whom the Local Authorities (Employment Protection) Act 1963 applies by virtue of subsection (1) of this section shall be entitled to receive any payment or other benefit, not being a payment or benefit to which that person is entitled under that Act, by reason only of the application of that Act to that person. 25

(3) Nothing in the Local Authorities (Employment Protection) Act 1963 (as applied by subsection (1) of this section) shall affect any rights or liabilities under any provident, benefit, superannuation, or retirement fund or scheme of any person to whom that Act applies. 30

9. Joint venture agreements dissolved—(1) Subject to subsection (2) of this section, on the vesting day the joint venture agreements shall, by virtue of this section, be deemed to be unenforceable and of no effect. 35

(2) Nothing in subsection (1) of this section limits or affects the liability of any person for breach of the joint venture agreements by reason of any act or omission before the vesting day.

10. Airport reserves—(1) The Minister of Finance may, from time to time, by notice in writing to the Auckland Regional Authority require the Authority to pay to the Crown and the constituent authorities such amount as shall be 40

specified in the notice from the airport reserves or transfer to the Crown and the constituent authorities such securities in which the reserves are held as may be so specified, as the case may be.

5 (2) Every notice given under **subsection (1)** of this section shall be published in the *Gazette*.

(3) On the date specified in the notice, not being a date earlier than 28 days after the notice is given, or on such later date as may be agreed to by the Minister at the request of the
10 Authority, the Auckland Regional Authority shall pay to the Crown and the constituent authorities the amount specified in the notice or transfer to the Crown and the constituent authorities the securities specified, as the case may be.

(4) Subject to **subsection (5)** of this section, the amount
15 required to be paid or the securities required to be transferred by the Auckland Regional Authority pursuant to a notice under this section shall be paid or transferred—

(a) Fifty percent to the Crown; and

(b) Fifty percent to the constituent authorities according to
20 their specified percentages.

(5) In the case of the reserves comprised in the Airport Development Reserve, the amount required to be paid or the securities required to be transferred by the Auckland Regional Authority pursuant to a notice under this section shall be paid
25 or transferred—

(a) Eighty percent to the Crown; and

(b) Twenty percent to the constituent authorities according to their specified percentages.

(6) Where all or any money payable under this section is not
30 paid or securities required to be transferred are not transferred, as the case may be, on or before the date specified in the notice or otherwise agreed by the Minister as the date for payment or transfer, the Auckland Regional Authority shall pay interest to the Crown and the constituent authorities in the proportions referred to in **subsection (4)** of this section at such rate as shall be
35 specified by the Minister.

(7) A notice may be given under this section whether or not the company has been formed and registered and whether or not the vesting day has been specified.

40 **11. Crown and constituent authorities to indemnify Auckland Regional Authority—**(1) The Crown and the constituent authorities shall indemnify the Auckland Regional

Authority for any liability in respect of any assets or liabilities vested in the company under this Act.

(2) The liability of the Crown under this section shall be 50 percent and each of the constituent authorities shall be liable according to its specified percentage. 5

(3) Nothing in subsection (1) of this section shall relieve any person of any liability under a policy of insurance.

12. Duty to act in furtherance of objects of this Act—

(1) The Crown, the Auckland Regional Authority and every constituent authority shall at all times do everything in their power to achieve the objectives of this Act and for that purpose, but without limitation, shall do everything in their power to— 10

(a) Preserve all airport assets pending the vesting of those assets in the company: 15

(b) Assist in the preparation of any list or lists of airport assets and airport liabilities:

(c) Enable the company to take possession of airport assets vested in it under this Act:

(d) Assist in ascertaining the airport reserves and supplying details relating to investments of those reserves: 20

(e) Assist in the transfer of employees to the company.

(2) The Auckland Regional Authority shall not, without the prior written consent of the Ministers,—

(a) Dispose of or charge any airport asset; or 25

(b) Enter into any lease, licence, concession or other franchise agreement or arrangement of more than 6 months duration relating to any airport asset.

13. Supply of information—(1) The Minister of Finance or the Minister of Civil Aviation and Meteorological Services may, from time to time, require the Auckland Regional Authority or any constituent authority to make available to that Minister information in its possession or over which it has control relating to the assets, liabilities, management or operation of the airport and the Auckland Regional Authority or that constituent authority shall make that information available to the Minister. 30 35

(2) All information required to be made available under this section shall be made available in a form in which it may be readily understood. 40

14. Alteration to Schedule—The Governor-General may, from time to time, on the recommendation of the Minister of

Finance and the Minister of Local Government, by Order in Council, alter, add to or vary the Schedule to this Act, or revoke the Schedule to this Act and substitute a new Schedule to this Act.

- 5 **15. Amendment to Stamp and Cheque Duties Act 1971**—Section 11 (2) of the Stamp and Cheque Duties Act 1971 is hereby amended by adding the following paragraph:
 “(r) Subsection (6) of section 3A of the Airport Authorities Act 1966.”

- 10 **16. Amendment to Civil Aviation Act 1964**—Section 13B (3) of the Civil Aviation Act 1964 (as inserted by section 8 (4) of the Airport Authorities Amendment Act 1986) is hereby amended by omitting the words “Crown; and, without further authority than this section, any such money may be used for
15 such purposes (whether or not related to the airport) as the Minister thinks fit”, and substituting the words “Consolidated Account”.

17. Repeals—The following enactments are hereby repealed with effect on and from the vesting day:

- 20 (a) Sections 40 to 41B of the Auckland Regional Authority Act 1963:
 (b) Section 8 of the Auckland Regional Authority Amendment Act 1965:
 (c) Section 6 of the Auckland Regional Authority Amendment Act 1966:
25 (d) Section 10 of the Airport Authorities Amendment Act 1986.
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SCHEDULE

Constituent Authorities	Specified Percentages
Auckland City Council	32.81
Birkenhead City Council	1.79
Devonport Borough Council	1.81
East Coast Bays City Council	1.89
Ellerslie Borough Council	0.95
Franklin County Council	1.99
Glen Eden Borough Council	0.89
Helensville Borough Council	0.10
Henderson Borough Council	0.80
Howick Borough Council	1.39
Manukau City Council	5.47
Mt Albert City Council	4.50
Mt Eden Borough Council	3.29
Mt Roskill Borough Council	5.75
New Lynn Borough Council	1.63
Newmarket Borough Council	0.83
Northcote Borough Council	1.11
One Tree Hill Borough Council	2.70
Onehunga Borough Council	2.92
Papakura City Council	3.58
Papatoetoe City Council	3.24
Pukekohe Borough Council	0.58
Rodney County Council	0.42
Takapuna City Council	4.25
Tamaki City Council	5.34
Tuakau Borough Council	0.12
Waiheke County Council	0.19
Waitemata City Council	9.52
Waiuku Borough Council	0.14